

Customer No. 25280

Case No. 5389

Remarks

Claims 4-14 are pending in this Application. Claims 4, 7 and 10 have been amended. Claims 1-3 and 13-14 have been cancelled. Thus, claims 4-12 are subject to continued examination.

Objection to the Terminal Disclaimer

The Examiner submits that the terminal disclaimer does not comply with 37 CFR 1.321 (b) and/or (c) because the attorney signing the disclosure is not of record. Please note that a terminal disclaimer signed by an authorized attorney of record is included with this response.

Non-Statutory Double Patenting Rejection

Claims 4-12 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-25 of US Patent Number 6,541,554 issued to Morin et al. as set forth in the last office action. Applicants have submitted a properly signed terminal disclaimer directed to this patent. Applicants respectfully submit that such this submission obviates any continued obviousness-type double patenting rejection. Reconsideration and withdrawal of such rejection is thus requested.

Obviousness Rejections

Customer No. 25280

Case No. 5389

Claims 4-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of US 5,798,167 issued to Conner et al., as set forth in the last Office Action. Continued rejection on this basis is respectfully traversed and reconsideration is requested.

The Examiner maintains that the claimed shrinkage rates are inherent in Fujishita or would inherently be met by the combined teachings of Fujishita and Conner. Applicants have noted that the claimed shrinkage rate of less than 2% is at least 60% lower than the shrinkage rates disclosed in Fujishita. As best understood, the Examiner has taken the position that because the claimed shrinkage rates were measured at 5 minutes and the reference measures after 15 minutes, the two cannot be directly compared but that the claimed shrinkage rates would nonetheless be inherent in Fujishita if the 5 minute test were carried out.

Applicants respectfully note that MPEP § 2112 specifically states that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)."

In addressing the requirements to establish inherency the MPEP states that the Examiner must provide a basis in fact and/or technical reasoning to reasonably

Customer No. 25280

Case No. 5389

support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Applicants respectfully submit that such a basis has not been provided.

The Office Action takes the further position that if the claimed shrinkage values are not inherently met by Fujishita, such values would be met by the combination of the teachings of Fujishita and Conner. Applicants respectfully disagree.

In order to support an obviousness rejection all elements of the claims must be taught or suggested by the cited art. In the present case it is respectfully submitted that there is nothing in the combination of Fujishita and Conner which suggests a tufted carpet with a backing layer comprising polypropylene tape fibers as claimed. Certainly there is no indication of low shrinkage polypropylene tape fibers incorporating the levels of nucleator compound claimed. To the contrary, Conner advocates substantially higher levels of nucleating agent. In particular, Conner advocates from about 0.1 percent (1000 ppm) to about 0.3 percent (3000 ppm) nucleating agent. Thus, it is respectfully submitted that the cited art is not sufficient to render the claims obvious.

Claims 13 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,560,734 to Fujishita et al. in view of US 5,798,167 issued to Conner et al. Applicants submit that the cancellation of these claims renders such rejection moot.

Customer No. 25280

Case No. 5389

Conclusion:

For the reasons set forth above, it is respectfully submitted that all claims now stand in condition for allowance.

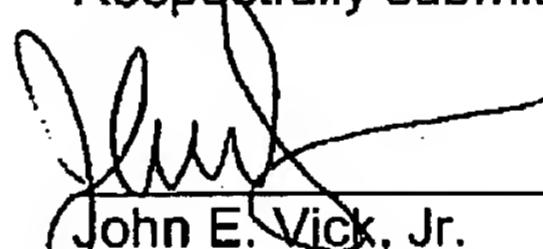
Should any issues remain after consideration of this Amendment and accompanying Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

To any extent required for acceptance of this paper, an extension of time is hereby requested.

In the event that there are additional fees associated with the submission of these papers (including extension of time fees), authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

June 30, 2004

Respectfully submitted,


John E. Vick, Jr.
Registration No. 33,808
Attorney for Applicant

MILLIKEN AND COMPANY
920 Milliken Road, M-495
Spartanburg, SC 29303
Telephone (864) 503-1383
Facsimile (864) 503-1999